IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 25086 of 2007(J)

PETITIONER:

V.D.BABU, H.C.U. 456,
ASST.SUB INSPECTOR OF POLICE,
IDUKKI POLICE STATION,
IDUKKI.

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,
VAZHUTHAKADU, THIRUVANANTHAPURAM.

3. INSPECTOR GENERAL OF POLICE,
ERNAKULAM RANGE, ERNAKULAM.

4. THE DEPUTY INSPECTOR GENERAL OF
POLICE, ERNAKULAM.

5. SUPERINTENDENT OF POLICE,
DISTRICT POLICE HEAD QUARTERS,
IDUKKI.

BY GOVT. PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Antony Dominic, J.

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W.P(C).No.25086 of 2007

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Dated this the 18th day of August, 2007.

JUDGMENT

This Writ Petition is filed by an Assistant Sub Inspector of Police seeking to quash Exts. P1, P2 and P8 orders and to direct the third respondent to grant him promotions that are due. The facts leading to the case are that at the time when the petitioner was working as Head Constable in Marayoor Police Station, he left Station on 17.10.1999 for Idukki and this led to a charge being levelled against him for leaving the station without permission. Finally, he was imposed a punishment of withholding of one increment for six months and in appeal, it was reduced to three months by Ext.P2 order. Review filed against Ext.P2 was rejected by Ext.P3 by the Government.

2. This punishment was also the subject matter of O.P.No.10449 of 2003 and during the pendency of that case, the petitioner was promoted as Assistant Sub Inspector of Police. The Writ Petition was disposed of by Ext.P5 judgment directing

reconsideration of the Review Petition. Eventually by Ext.P8 order, the Review Petition was again rejected. It is to quash Ext.P8 that this Writ Petition has been filed.

3. It is submitted that the allegation that the petitioner made entries in the general dairy is unsustainable for the reason that according to the petitioner, he was the seniormost Head Constable then available at the Police Station and therefore he was entitled to make such entries. In support of this contention, reliance is placed on Section 67 of the Kerala Police Act. Section 67 of the Kerala Police Act provides that it shall be the duty of every officer in charge of a police station to keep a general diary in such form as be prescribed by the Government and to record therein all complaints and charges preferred, the names of the complainants, and the names of persons, if any, against whom complaints are made, the names of all persons arrested, the offences charged against them, the weapons or property that may have been taken from their possession or otherwise and the names of witnesses who may have been examined. Section 67 of the above Act does not deal with the entry that was unauthorisedly made by the petitioner and therefore, the

contention of the petitioner relying on Section 67 of the above Act is totally unsutainable.

4. Next it is contended that the Principal Secretary of Government had issued Ext.P7 notice, but he was heard by the Under Secretary to Government and that Ext.P8 has been issued by the Under Secretary. On this basis, it is contended that the Under Secretary was incompetent to hear and pass Ext.P8 order. In Ext.P5 judgment of this Court in O.P.No.10449 of 2003, this Court directed the first respondent to consider the Review Petition of the petitioner. First respondent in that Original Petition is the State of Kerala. It was in pursuance to Ext.P5 judgment that Ext.P7 notice was issued. Although the letter is described to be from the Principal Secretary to Government, Home(H) Department, the letter requires the petitioner to be present before the Under Secretary to Government in his room (near the Durbar Hall, Government Secretariat, Thiruvananthapuram). It was accordingly that the petitioner appeared before the Under Secretary for personal hearing and that Under Secretary himself has issued Ext.P8. Therefore, notice of hearing was issued by the Under Secretary and hearing

was conducted by the Under Secretary and the Under Secretary has issued the order also. In my view, there is no merit in the petitioner's contention that the Under Secretary to Government was incompetent to pass Ext.P8 order. That apart, petitioner has appeared for personal hearing before the Under Secretary without any objection and cannot now contend that he was incompetent to hear the matter.

5. Third submission made by the learned counsel for the petitioner that in Ext.P5 judgment, this Court had directed that if any reliance is placed on any material which is not in the knowledge of the petitioner, he should be put on notice of the same. On this basis it is contended that in Ext.P8 reliance has been placed on a letter dated 16.1.2007 from the Director General of Police and that the contents of the letter were not disclosed to the petitioner. According to him, this is in violation of the principles of natural justice and on that ground, Ext.P8 is vitiated. It is true that the principles of natural justice requires that the contents of a document which is relied on against a delinquent should be disclosed to him. Though the letter dated 16.1.2007 of the Director General of Police is mentioned as

Sl.No.6, on a reading of the order, I am not able to see that this letter has been referred to anywhere in the order. Therefore, this letter has not influenced the decision making process in any manner so as to cause any prejudice to the petitioner. Therefore, I do not think that mere reference to the letter of the Director General of Police without anything more, has caused any prejudiced to the petitioner to contend that there has been infraction of the principles of natural justice.

6. I do not find any merit in the aforesaid contentions raised by the learned counsel for the petitioner. This Writ Petition lacks merit and it is only to be dismissed. I do so.

Antony Dominic,
Judge.

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